

ATTACHMENT 4

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	:	CASE NO. 2-88-01124
ASTROLINE COMMUNICATIONS COMPANY	:	CHAPTER 7
LIMITED PARTNERSHIP,	:	
<hr/>		
MARTIN W. HOFFMAN, Trustee	:	
Plaintiff,	:	
- against -	:	
RICHARD P. RAMIREZ; WHCT	:	
MANAGEMENT, INC., THOMAS A. HART,	:	Adv. Proc. No.
JR.; ASTROLINE COMPANY; ASTROLINE	:	
COMPANY, INC.; HERBERT A. SOSTEK;	:	93-2220 (RLK)
FRED J. BOLING, JR.; RICHARD H.	:	
GIBBS; RANDALL L. GIBBS; CAROLYN	:	
H. GIBBS, RICHARD GOLDSTEIN,	:	
EDWARD A. SAXE and ALAN TOBIN,	:	
AS CO-EXECUTORS OF THE ESTATE OF	:	
JOEL A. GIBBS; ROBERT ROSE and	:	
MARTHA GIBBS ROSE,	:	
Defendants.	:	MARCH 31, 1994

AFFIDAVIT OF KENT W. DAVENPORT

The undersigned, being first duly sworn, deposes and says:

1. I am a partner in the Boston office of Arthur Andersen & Co. I am over 18 years of age and am competent to make this affidavit. I was primarily responsible for all tax related work performed by Arthur Andersen & Co. for Astroline Communications Company Limited Partnership.

2. Attached hereto as Exhibit A is a memorandum dated May 14, 1985 prepared by me relating to a telephone conference call among various parties regarding projects and responsibilities which were to be performed by Arthur Andersen and others in structuring Astroline Communications Company Limited Partnership. As set forth in paragraph 1 of this memorandum, it was agreed that Astroline Company would continue to be the limited partner of Astroline Communications Company Limited Partnership and that the partners of Astroline Company would not become limited partners of Astroline Communications Company Limited Partnership in their individual capacities. It was further agreed that the partners of Astroline Company would become general partners of Astroline Company for tax reasons.

3. In conjunction with this engagement, the allocation of profits and losses among the partners of Astroline Communications Company Limited Partnership was changed. In particular, based in part upon advice by Arthur Andersen, the allocation of profits, losses and cash flow was changed such that the limited partners would receive 99% of profits, losses and cash flow until such time as their capital contributions, plus a return, were repaid. Thereafter, Thomas Hart and Richard Ramirez, the two individual general partners, would receive a priority distribution of \$1,000,000. Thereafter, profits, losses and cash flow would be allocated in accordance with the ownership percentages set forth in the Astroline Communications Company Limited Partnership Agreement.

4. This allocation of profits, losses and cash flow was based upon and similar to the allocation of profits, losses and cash flow in numerous real estate limited partnerships.


Kent W. Davenport

Subscribed and sworn to this
1st day of April, 1994,
before me CATHERINE M. QUINN

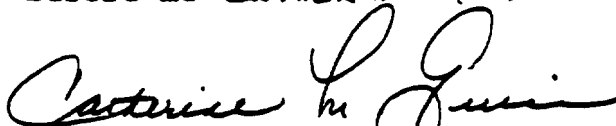

Commissioner of the Superior Court
Notary Public
My commission expires My Commission Expires Oct. 18, 1996

EXHIBIT A

INTEROFFICE COMMUNICATION

TO OFFICE FROM BOSTON OFFICE

FOR MEMORANDUM FOR THE FILES FROM KENT W. DAVENPORT

DATE MAY 14, 1985 JOB OR ACCOUNT NO.

SUBJECT ASTROLINE COMMUNICATIONS COMPANY

[illegible]

On May 13, 1985, during a conference call among Herb Sortak, Fred Boling, Rich Ramirez, Bill Lance of Peabody & Brown, and Roger Eastman, George Noble, and Kent Davenport of Arthur Andersen, the following projects and responsibilities were agreed upon concerning the formation of Astraline Communications Company:

1. It was agreed that Astroline Company will serve as the limited partner in Astroline Communications Company. In order to finalize this approach, it will be necessary to convert all existing partners in Astroline Company into general partners. Bill Lance indicated that this would be a very simple process and indicated that he would see that the necessary steps are executed. The next step in this process will be to have Astroline Company distribute all of its assets other than its investment in Astroline Communications Company to the current partners in Astroline Company. Bill Lance will review this procedure and be prepared to discuss it with Herb and Fred on Thursday, May 16. The final step in this process will be to admit the Roses as general partners into Astroline Company. Bill Lance will also be responsible for preparing the necessary documents to finalize the Roses' admission into the partnership.
2. We again discussed the transfer of the limited partnership interests to various new employees as they become employed by Astroline Communications Company. Fred made it very clear that if any of these individuals were to terminate his employment with the partnership, then WKT wants to retain an option to reacquire the terminating employee's partnership interest. It was agreed that Rich will prepare a formula to be used in determining the option price. Once this formula has been agreed upon, Bill Lance will prepare the necessary documents to execute the option provision.

INTEROFFICE COMMUNICATION

ASTROLDE COMMUNICATIONS

- 2 -

MAY 14, 1985

3. Rich will continue his negotiations with the leasing company in order to get detailed information as to the costs associated with the transaction. Rich will negotiate with the leasing company on the basis that the partnership has a commitment from the Bank of Boston to guarantee its working capital needs until the partnership has a cash excess. These funds will be contributed to the partnership as capital contributions by Astroline Company. The partnership would like a seven-year lease arrangement and would also like a rate comparison if the company were to request a two-year moratorium on principal payment.
4. Once the lease company information has been determined, Arthur Andersen & Co. will prepare revised projections for the station's operations.
5. Because of the change in the structuring of the borrowings such that they are now at the Astroline Company level and not the Astroline Communications level, the partnership agreement will have to be revised accordingly. It is also anticipated that a revision will be made into the profit/loss ratios during the early years of the partnership. Bill Lance will make the necessary amendments to the partnership agreement. However, it was agreed that all of the changes resulting from the revision in the structure should be made at the same time. Once these changes have been agreed upon, Bill Lance will prepare the necessary documentation for implementation.


KENT W. DAVENPORT

AW

RC 005410

PS 000599

CERTIFICATE OF SERVICE

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"CONSOLIDATED REPLY OF RICHARD P. RAMIREZ TO COMMENTS OF MASS MEDIA BUREAU AND OPPOSITION OF SHURBERG BROADCASTING OF HARTFORD"** was sent this 15th day of August, 1997, by first class United States mail, postage prepaid, to the following:

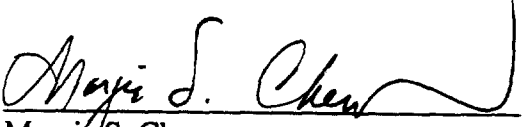
*The Honorable John M. Frysiak
Federal Communications Commission
2000 L Street, N.W.
Room 222
Washington, D.C. 20554

*James Shook, Esq.
Catherine Withers, Esq
Federal Communications Commission
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1400 16th Street, N.W.
Washington, D.C. 20036


Margie S. Chew

* VIA HAND-DELIVERY

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

**FCC 97M M-140
71706**

In re Applications of)	
)	
Martin W. Hoffman)	MM Docket No. 97-128
Trustee-in-Bankruptcy for)	
Astroline Communications Company)	
Limited Partnership)	
)	
For Renewal of License of)	File No. BRCT-881201LG
Station WHCT-TV,)	
Hartford, Connecticut)	
)	
and)	
)	
Shurberg Broadcasting of Hartford)	
)	
For Construction Permit for a New)	File No. BPCT-831202KF
Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	
)	

MEMORANDUM OPINION AND ORDER

Issued: August 20, 1997; Released: August 21, 1997

1. Under consideration are the following:

Petition for Emergency Relief and Stay of Proceedings, filed July 25, 1997, Richard P. Ramirez ("Ramirez");

Comments on Petition for Emergency Relief and Stay of Proceedings, filed August 5, 1997, the Mass Media Bureau ("Bureau");

Comments in Support of Petition for Emergency Relief and Stay of Proceedings, filed August 5, 1997, by Two If By Sea Broadcasting Corporation ("TIBS");

Comments in Support of Petition for Emergency Relief and Stay of Proceedings, filed August 5, 1997, by Martin W.

Federal Communications Commission

Hoffman, Trustee-in-Bankruptcy for Astroline
Communications Company Limited Partnership ("Trustee");

Opposition of Shurberg Broadcasting of Hartford ("SBH") to
Petition for Emergency Relief and Stay of Proceedings, filed
August 5, 1997; and

Consolidated Reply of Richard P. Ramirez to Comments of
Mass Media Bureau and Opposition of Shurberg Broadcasting
of Hartford, filed August 15, 1997.

2. In December 1984, the Commission granted the distress sale assignment of WHCT-TV's license to Astroline Communications Company Limited Partnership ("ACCLP"). Ramirez (of Hispanic origin) is one of the general partners of ACCLP who allegedly had a 21 percent ownership interest and a 70 percent voting interest. The general and limited partners of ACCLP asserted that they will structure all transactions to maintain Ramirez' voting control over the affairs of the company and to insure that minority group persons have at least a 21 percent ownership interest in ACCLP. HDO, ¶3.

3. The competing applicant Shurberg charges that these representations were untrue because, as indicated in a pleading filed by the Trustee with the Bankruptcy Court, the non-minority participants who ACCLP had represented to the Commission as limited partners held themselves out to be general partners in formal documents related to ACCLP's relationship with a financing bank. HDO, ¶5. Shurberg also has provided an excerpt from a brief filed by the Trustee in a certain pleading in which the Trustee asserted that the ACCLP's supposed 21 percent minority owner actually held less than one percent of the licensee "[n]otwithstanding the FCC minority preference guidelines." HDO, ¶7. In light of these assertions the Commission designated for hearing the issue whether ACCLP misrepresented facts to the Commission and the Federal Courts in connection with statements it made concerning the status as a minority controlled entity.

4. By its Petition, Ramirez seeks to stay this proceeding and to delete the misrepresentation issue designated against ACCLP.

5. In support of his requests, Ramirez avers that the pleadings upon which Shurberg relied to support its allegations and the facts presented therein were fully litigated in, and disposed of, by the Federal Courts wherein it was determined that Ramirez was in control of ACCLP and that ACCLP's limited partners did not act as general partners.

Federal Communications Commission

6. Additionally, Ramirez charges that the Commission arbitrarily and capriciously refused to apply the Second Thursday¹ doctrine in basing its decision on an erroneous depiction of the facts, rendering its decision irreconcilable with Commission action in similar cases.

7. Ramirez' Petition must be denied on procedural grounds. Although it is styled as a petition for emergency relief it is, in effect, a petition for reconsideration of a hearing designation order. The Presiding Judge has no authority to grant such relief. See Section 1.106(a) of the Commission Rules.

8. Secondly, Ramirez' pleading also seeks to have the representation issue deleted. This request is late filed. Section 1.229(a) of the Commission Rules provides that a motion to delete must be filed within 15 days after the Federal Register publication of the designation order or summary thereof. Section 1.229(b)(3) states that if the motion is late filed, it will be granted only if good cause is shown for the delay in filing. Ramirez made no such showing in his Petition. The HDO herein was released on April 28, 1997. Ramirez filed his Petition for Leave to Intervene on May 29, 1997. Ramirez attended the prehearing conference herein on June 2, 1997. The instant HDO summary occurred on June 9, 1997. Ramirez was granted leave to intervene on June 20, 1997, but did not file his request to delete issue until July 25, 1997, well after the 15 day deadline specified in Section 1.229(a) and more than 15 days after being granted leave to intervene. It is deemed that Ramirez had ample time to raise the issue timely, or to seek leave to file late but failed to do so. Nor did Ramirez directly address the good cause requirement of Section 1.229(b)(3) in his Petition.

9. Ramirez' Petition also must be denied on its merits. As the Bureau notes, the litigation in Bankruptcy Court focused on whether the limited partner of ACCLP was liable as a general partner for certain debts for having participated in the control of ACCLP's business substantially the same as in the exercise of a general partner. After a trial the Bankruptcy Court concluded "[ACCLP limited partners'] activities in connection with the Debtor do not meet the standard of substantially the same as the exercise of the powers of a general partner." In re Astroline Communications Co. Ltd., 188 B.R. 98, 100 (Bank. Ct. D. Conn. 1995). This decision was essentially affirmed by the United States District Court and the 2d Circuit Court of Appeals.

¹ In Second Thursday Corp., 22 FCC 2d 515, recon. granted, 25 FCC 2d 112 (1970), the Commission created an exception to the general rule that a licensee may not transfer facilities involved in a hearing concerning its character qualifications unless it is found qualified to remain a licensee. Under Second Thursday, a licensee in bankruptcy may assign its license if the individuals charged with misconduct will have no part in the proposed operations and will either derive no direct benefit from favorable action on the assignment or will receive only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors.

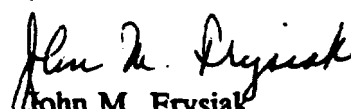
Federal Communications Commission

10. In opposition to Ramirez' Petition it is argued that putting the question of control aside the Bankruptcy Court made no finding relative to Ramirez' ownership interests in ACCLP. Although the Bankruptcy Court decision noted Ramirez' ownership interest at 21 percent at inception, such finding is far from dispositive in resolving the question of whether Ramirez' ownership interests in ACCLP dropped below 20 percent during the period 1984-1991. The opponents have submitted federal income tax filings which suggest that Ramirez owned less than one percent of ACCLP while ACCLP was representing otherwise to the Commission. Pursuant to the Commission's minority distress policy ACCLP's minority owners not only had to have legal control but also at least a 20 percent ownership interest. Faith Center, Inc., 99 FCC 2d 1164, 1173 (1984). It is clear that the Federal Courts did not decide all relevant matters regarding compliance with the Commission's minority distress sale policy. Deletion of the misrepresentation issue is not warranted. A question of probable decisional significance has been adequately raised and has to be resolved at hearing.

11. Ramirez' claim that the Commission's decision was arbitrary and capricious because Hoffman was not accorded Second Thursday relief must also be rejected. The Commission's decision not to consider such relief is fully explained in the HDO, (see ¶11) and is not subject to review by the Presiding Judge. See Atlantic Broadcasting Company (WUST) et al., 5 FCC 2d 717, 720 (1966). That the Commission in MobileMedia allowed the licensee therein to pursue Second Thursday relief is of not significance as the facts and circumstances for granting the relief therein differ significantly from those considered in the instant proceeding.

Accordingly, IT IS ORDERED that the Petition for Emergency Relief and Stay of Proceedings, filed July 25, 1997, Richard P. Ramirez IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiak
Administrative Law Judge

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

RECEIPT COPY
RECEIVED
AUG 28 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 97-128
)	
Martin W. Hoffman, Trustee-in-Bankruptcy)	File No. BRCT-881202KF
for Astroline Communications Company)	
Limited Partnership)	
)	
For Renewal of License of)	
Station WHCT-TV, Hartford, Connecticut)	
)	
and)	
)	
Shurberg Broadcasting of Hartford)	File No. BPCT-831202KF
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	

To: The Honorable John M. Frysiak
Administrative Law Judge

REQUEST FOR LEAVE TO FILE APPEAL

Richard P. Ramirez ("Mr. Ramirez"), by his attorneys, and pursuant to §1.301(b) of the Commission's Rules, 47 C.F.R. §1.301(b), hereby requests leave to appeal the Presiding Judge's Memorandum Opinion and Order, FCC 97M-140 (released August 21, 1997) ("MO&O"). The MO&O denied the Petition for Emergency Relief and Stay of Proceedings filed by Mr. Ramirez in this proceeding (the "Petition").

Leave to appeal should be granted because the MO&O raises a new or novel question of

law and policy in accordance with §1.301(b).¹ The MO&O departed from the Commission's longstanding precedent regarding the deletion of issues and ignored the fact that the FCC must accord the decisions of the civil courts full faith and credit. Town of Deerfield, New York, 992 F.2d 420, 430 (2d Cir. 1993). In so doing, the MO&O has raised a new and novel question as to how the Commission should treat allegations against a licensee which have been resolved favorably in the civil court system. Denial of Ramirez's Petition unnecessarily prolongs this proceeding and wastes the time and resources of the Commission, the public, and the parties to this proceeding.

I. THE PRESIDING JUDGE HAS AUTHORITY TO GRANT THE RELIEF REQUESTED IN THE PETITION AND DEPARTED FROM COMMISSION PRECEDENT IN REFUSING TO GRANT SUCH RELIEF.

1. The Petition requested that the Judge stay the hearing and delete the misrepresentation issue. While the Petition also requested the Judge to certify this proceeding to the Commission for its reconsideration of the applicability of the Second Thursday doctrine in this case, it did not request the Judge to reconsider the HDO. The Mass Media Bureau agreed with Ramirez that the Petition was a request for deletion of the misrepresentation issue. Section 1.243(k) of the Commission's Rules provides that the Presiding Judge has the authority to act on motions to delete hearing issues. See also Practice and Procedure, 36 R.R.2d 1203 (1976). Consequently, the Presiding Judge has the authority to grant the relief requested in the Petition.

2. Not only can the Judge grant the requested deletion of the issue, but he must grant such relief in this case pursuant to prior Commission practice. It is the Commission's practice to

¹ While Section 1.301(b) also contemplates a showing that error would be likely to require remand should the appeal be deferred, it is impossible to meet this test when a petition to delete an issue has been denied. To the extent that the rule contains a requirement that is impossible of effectuation, a waiver of this aspect of the rule is appropriate.

delete an issue where there is a “compelling showing of unusual circumstances such as where the Commission overlooked or misconstrued pertinent information before it at the time of designation.” See Post-Newsweek Stations Florida, Inc., 52 F.C.C.2d 883, 885 (Rev. Bd. 1975).

3. It is difficult to imagine a more compelling set of circumstances than where the issues to be addressed in a hearing have already been addressed by the civil courts and the Commission overlooked the judicial resolution in designating the previously-resolved matter for hearing. Yet, that is exactly what happened in this case. The MO&O failed to address the fact that the compelling circumstances of this case mandate that the Judge delete the misrepresentation issue in light of the Commission’s failure to consider the Bankruptcy Court’s resolution of the issues to be considered in the hearing. Traditionally, the Commission has held that “[w]here . . . the issues had been inadvertently specified because all of the facts were not considered, petitions to delete will receive favorable consideration.” See Salter Broadcasting Company (WBEL) et al., 8 F.C.C.2d 212, 213 (Rev. Bd. 1967) (citing Cleveland Broadcasting, Inc., 1 R.R.2d 676 (Rev. Bd. 1963)). As a result, because the HDO failed to account for the Bankruptcy Court’s decision in favor of ACCLP, Commission policy requires that the Judge delete the misrepresentation issue.

II. MR. RAMIREZ HAD GOOD CAUSE FOR FILING THE PETITION AFTER THE NORMAL DEADLINE FOR FILING MOTIONS TO DELETE ISSUES HAD PASSED.

4. The MO&O stated that the deadline for petitioning to delete an issue in this case would normally be within 15 days after the summary of the designation order appeared in the Federal Register. The Judge acknowledged, however, that for good cause, a motion filed after the normal time period could be granted.

5. In this case, Mr. Ramirez had not even been made a party to this proceeding until

two business days before the expiration of the normal time period, and he did not learn that he had been granted leave to intervene until four days after that. The fact that Mr. Ramirez was not even aware that he had been made a party to the proceeding prior to the expiration of time for seeking deletion of the issues is certainly good cause for not requesting relief prior to that time.

6. The Commission has recognized that good cause exists for accepting late-filed petitions where a petitioner has entered the proceeding after the time for filing a motion had lapsed. See, e.g. Charlottesville Broadcasting Corp., 1 F.C.C.2d 1323 (Rev. Bd. 1965). Indeed, Mr. Ramirez filed his Petition swiftly after he had been granted leave to intervene in this proceeding considering the massive amounts of documents that had to be reviewed to prepare the Petition. In granting an extension of the procedural dates in this proceeding, the Judge acknowledged the enormity of the task in reviewing the "17 boxes, numbering in the tens of thousands of pages [of documents that] have been produced . . . includ[ing] trial testimony and several hundred exhibits from the Bankruptcy Court hearing as well as deposition transcripts and 14 boxloads of miscellaneous, unindexed documents compiled in the course of the bankruptcy proceeding." See In re Applications of Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership For Renewal of License of Station WHCT-TV, Hartford, Connecticut, Order, FCC 97M-141 (released August 21, 1997).

**III. THE MO&O ERRONEOUSLY REFUSED TO HONOR THE
BANKRUPTCY COURT'S RESOLUTION OF THE ISSUE OF MR.
RAMIREZ'S OWNERSHIP INTEREST IN ACCLP.**

7. The MO&O refused to honor the Bankruptcy Court's resolution of the issue of Mr. Ramirez's ownership interest in and control of ACCLP. Administrative agencies cannot ignore federal court judgments. Town of Deerfield, New York, 992 F.2d 420, 428 (2nd Cir. 1993). Quoting Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp., 333 U.S.

103, 113 (1947), the Second Circuit in Town of Deerfield said “[j]udgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another Department of Government.’ If an administrative agency were entitled to ‘completely disregard the judgment of the court, it would be only because it is one the courts were not authorized to render.’” Id. Here, the Commission is ignoring the judgments of civil courts which, based on an extensive hearing record, found that Mr. Ramirez controlled ACCLP and had a 21% ownership interest in the company. This action raises a new and novel question as to how the Commission should treat allegations against a licensee that have been resolved favorably in the civil court system. The Commission’s policy statements only deal with situations where a court has ruled that a licensee has violated a law, not where the licensee has been exonerated by the courts. Thus the Commission must address the appropriate action to be taken when it is confronted with allegations against a licensee which have already been addressed in favor of the licensee in the civil court system. Relitigating the case is not the answer since such action would place an undue burden on all parties concerned and it does not serve the public interest. Deletion of the issue is the appropriate remedy.

8. The MO&O failed to address the similarities between the civil proceeding and this case despite relying solely upon certain income tax filings, produced and considered in the previous proceedings, that allegedly call into question the level of Mr. Ramirez’s ownership of ACCLP. The MO&O erroneously assumed that information contained in these income tax filings reflects the level of Mr. Ramirez’s ownership of ACCLP. In reality, the legal document that governed Mr. Ramirez’s ownership of ACCLP was the Limited Partnership Agreement of ACCLP. This agreement consistently reflected that Mr. Ramirez’s ownership in the company always remained at 21%. What the MO&O failed to recognize is that the profit and loss

allocations that appeared in the tax filings were not indicative of ACCLP's actual ownership structure and therefore have no bearing upon the determination of ACCLP's ownership. The Bankruptcy Court received evidence that the Internal Revenue Code allows profit and loss allocations to differ from actual ownership percentages and considered this tax reporting methodology when it determined the ownership and control of ACCLP.

9. The MO&O acknowledged that the Bankruptcy Court decision found that Mr. Ramirez's ownership interest at ACCLP's inception was 21%. However, in concluding that "such finding is far from dispositive in resolving the question of whether [Mr.] Ramirez's ownership interests in ACCLP dropped below 20 percent during the period 1984-1991," the Judge overlooked the fact that the trial court's finding of fact was never qualified or altered. Moreover, the Second Circuit affirmed the Bankruptcy Court's findings of fact. See Summary Order of U.S. Court of Appeals for the Second Circuit (Ex. C to Petition).

IV. THE COMMISSION'S ARBITRARY AND CAPRICIOUS DEPARTURE FROM ITS ESTABLISHED SECOND THURSDAY DOCTRINE MUST BE REVISITED.

10. The Petition requested the Judge to certify this proceeding to the Commission for its reconsideration of the applicability of the Second Thursday doctrine in this case in light of the Commission's recent action in MobileMedia Corporation, FCC 97-197 (released June 6, 1997) ("MobileMedia"), where the Commission granted Second Thursday relief under facts far less compelling than those currently before the Commission.^{2/} In supporting the Commission's action in the HDO, the MO&O distinguishes MobileMedia from the instant case. The facts of MobileMedia do indeed differ significantly from those in this case; as set forth in Mr. Ramirez's

^{2/} The MO&O states that the Judge cannot review the Commission's failure to apply Second Thursday relief. However, Mr. Ramirez only requested that the Judge certify the issue to the Commission for reconsideration.

Petition, the *admitted* misrepresentations and gross abuse of the Commission's processes were dramatically *worse* in MobileMedia than in this case which involves mere *allegations* which have been disproven in civil court proceedings. As a result, the Commission's failure to afford Second Thursday relief in this case constitutes a sudden and radical departure from the application of this well-established doctrine.

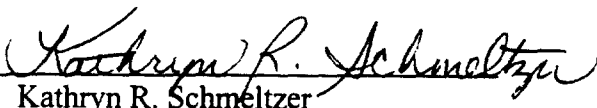
V. CONCLUSION

As shown above, deletion of the designated issue is appropriate here. In the absence of deletion, Ramirez should be granted leave to appeal the MO&O to the Commission because this case presents a unique situation which requires Commission review.

Respectfully submitted,

RICHARD P. RAMIREZ

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Washington, D.C. 20006-1851
(202) 659-3494

By: 
Kathryn R. Schmeltzer
C. Brooke Temple III
Colette M. Capretz
Counsel for Richard P. Ramirez

Dated: August 28, 1997

CERTIFICATE OF SERVICE

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"REQUEST FOR LEAVE TO APPEAL"** was sent this 28th day of August, 1997, by first class United States mail, postage prepaid, to the following:

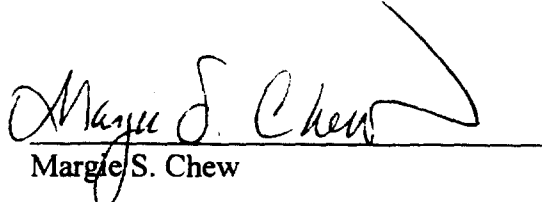
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Margie S. Chew

* VIA HAND-DELIVERY

Federal Communications Commission

FCC 97M-158
71836

Before the
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Washington, D.C. 20554

In re Applications of)	
)	
Martin W. Hoffman)	MM Docket No. 97-128
Trustee-in-Bankruptcy for)	
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Station WHCT-TV,)	
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Shurberg Broadcasting of Hartford)	
)	
For Construction Permit for a New)	File No. BPCT-831202KF
Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	
)	

ORDER

Issued: September 17, 1997; Released: September 18, 1997

Under consideration is the Request for Leave to File Appeal, filed August 28, 1997, by Richard P. Ramirez ("Ramirez").

Ramirez seeks leave to appeal the Memorandum Opinion and Order ("MO&O"), FCC 97M-140 (released August 21, 1997) which denied the Petition for Emergency Relief and Stay of Proceedings filed by Ramirez.

Section 1.301(b) provides that a request for leave to appeal an interlocutory ruling shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.

In denying the Petition for Emergency Relief and Stay of Proceeding ("Petition") filed by Ramirez, the MO&O noted the Petition was in effect a petition for reconsideration of a Hearing Designation Order which the Presiding Judge has no authority to grant (Section 1.106(a) of the Commission's Rules).

CLERK OF COURT
JUL 14 1995
5:57 PM

HARTFORD DIVISION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	:	CASE NO. 2-88-01124
ASTROLINE COMMUNICATIONS COMPANY	:	CHAPTER 7
LIMITED PARTNERSHIP,	:	
	:	
Debtor.	:	
<hr/>		
MARTIN W. HOFFMAN, Trustee	:	
	:	
Plaintiff,	:	
vs.	:	
	:	
RICHARD P. RAMIREZ; WHCT	:	
MANAGEMENT, INC., THOMAS A. HART,	:	ADV. PROC. NO.
JR.; ASTROLINE COMPANY;	:	93-2220 (RLK)
ASTROLINE COMPANY, INC.; HERBERT	:	
A. SOSTEK; FRED J. BOLING, JR.;	:	
RICHARD H. GIBBS; RANDALL L.	:	
GIBBS; CAROLYN H. GIBBS, RICHARD	:	
GOLDSTEIN, EDWARD A. SAXE AND	:	
ALAN TOBIN, AS CO-EXECUTORS OF	:	
THE ESTATE OF JOEL A. GIBBS;	:	
ROBERT ROSE and MARTHA GIBBS ROSE,	:	
	:	
Defendants.	:	
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	:	JULY 14, 1995

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Martin W. Hoffman, Trustee of Astroline Communications
Company Limited Partnership ("Trustee") submits these post-trial

Proposed Findings of Fact and Conclusions of Law. The central (and dispositive) factual issue at trial is whether the defendant Astroline Company exercised sufficient control over Astroline Communications Company Limited Partnership ("ACCLP" or the "Debtor"), such that it acted substantially the same as a general partner. As documented below, the evidence at trial demonstrated beyond question that Astroline Company exercised complete control over the Debtor's financial operations and cash and, in so doing, it, its general partners and its successor, Astroline Company, Inc., became liable under Section 723 of the Bankruptcy Code for the deficiency of property of the estate available to pay the claims of creditors.

PROPOSED FINDINGS OF FACT

1. ACCLP is a Massachusetts limited partnership that was formed on May 29, 1984, to "acquire, own and operate" a television station known as WHCT-TV, Channel 18 in Hartford, Connecticut (Trial Transcript, Vol. 3 at 71; Joint Exhibit 165). ("T. Vol. __ at __; Ex. __").

T. Vol. 3 at 78-79); and the Astroline Company partners considered abandoning the venture. Instead, Astroline Company chose to continue to fund ACCLP's operations and capital needs itself, as it had done since ACCLP's inception. (T. Vol. 1 at 134-37; T. Vol. 3 at 81).

16. Consistent with its decision to fund the capital requirements itself, Astroline Company caused the terms of the ACCLP partnership agreement to be modified such that Astroline Company significantly increased its share of the equity and secured more of the valuable tax benefits for its partners. A further result of the amendment was that, notwithstanding the FCC minority preference guidelines, Ramirez no longer owned 21% of the partnership's equity. (T. Vol. 1 at 138-62; Ex. 9, 54). Rather than retaining 21% of the equity which he held under the initial partnership agreement, Ramirez was given the right only to receive 21% of all partnership distributions after Astroline Company had been repaid its equity contributions in full, with a return. (T. Vol. 1 at 162; Ex. 9). Ramirez's interest, which had been reflected as 21% on the 1984 ACCLP tax return, was shown to have

been reduced to below 1% on the 1985, 1986 and 1987 tax returns. (Ex. 10-13).

17. Boling testified at trial that Astroline Company created and administered a comprehensive "cash control system" to deal with the Debtor's funds. (T. Vol. 5 at 103-05). Sullivan was responsible for managing ACCLP's cash. The cash control system covered all receipts and disbursements of the Debtor from its inception until August 31, 1988, when Astroline Company decided to cease investing in the Debtor. (T. Vol. 4 at 65; T. Vol. 5 at 16, 20, 126). One of Sullivan's principal purposes was to reduce interest expense to the Astroline Company partners who personally were borrowing money from a bank to invest in the Debtor through Astroline Company. Boling admitted that that particular feature of the cash control system was established for the personal benefit of the Astroline Company partners. (T. Vol. 5 at 105). The Debtor never borrowed any money until certain equity contributions were "reversed" and "reclassified" and had no responsibility for payment or reimbursement of interest expense incurred by the Astroline Company partners. (Ex. 24). There was